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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,988	08/21/2003	Deborah Lynn Carpenter		7496

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EXAMINER

FERNSTROM, KURT

ART UNIT	PAPER NUMBER
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3714

DATE MAILED: 05/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/644,988

Applicant(s)

CARPENTER ET AL.

Examiner

Kurt Fernstrom

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5,9-11,14,16 and 18-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5,9-11,14,16 and 18-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5, 9-11, 14, 16 and 18-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buckley in view of Makow, and further in view of Evans. The claims are directed to a device for tracking behavior, where positive reinforcement cards and punisher cards are selectively placed on a base panel. Buckley discloses in Figures 1-3 and in column 3, line 41 to column 4, line 34 of the specification a behavior tracking device comprising a base panel 10, on which various tab cards 16 are placed. As described at column 8, lines 1-47, the tab cards include positive reinforcement cards 16b having indicia thereon representing positive reinforcement for performing a favorable act, and consequence cards 16d, which essentially amount to punisher cards and have indicia thereon representing a punishment for performing a favorable act. As described at column 8, lines 42-47 of Buckley, the positive reinforcement cards and the consequence cards are placed on the board 10 and added up to represent a score. Buckley further discloses, in column 9, lines 11-18 and in column 10, lines 8-44 that tangible rewards including play money, toys, candy and so forth may be awarded to the child for positive behavior.

Buckley fails to disclose that positive reinforcement indicia and punishment indicia or provided on the opposite sides of the same card. However, cards having indicia on each side, to be selectively displayed by the user, is known. Makow discloses in Figures 3a and 3b and in column 8, lines 30-42 a device comprising cards 13, where each card has an indicia indicating one concept on one side (devil's fork 13a) and an indicia for indicating the opposite concept on the other side (halo 13b). It would have been obvious to one of ordinary skill in the relevant art to modify the device of Buckley by providing cards which have "reward" indicia on one side and "punishment" indicia on the other side for the purpose of allowing a user to use a single card to express either of the two concepts.

Buckley further fails to disclose that the card is attached to a base panel via a peg. Evans discloses in Figures 2A, 3 and 5 and in column 3, line 46 to column 4, line 51 of the specification a behavior tracking device comprising a base panel 14, where plates 24 are attached to the panel by pegs 16. It would have been obvious to one of ordinary skill in the relevant art to modify the device of Buckley by providing pegs on the base panel for the purpose of allowing a user to easily place a card on or remove a card from the base panel.

With respect to claim 2, each card of Buckley attaches to the base panel via pockets. With respect to the language in claims 2-5 and 9, Official Notice is taken that it is well known in educational devices for an instructor to give a user directions on how a teaching device or method works and what the "rules" are. With respect to claims 10 and 11, Official Notice is further taken that it is well known to include children in

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discussions on matters such as discipline. With respect to claims 19, 26, 27, 32 and 33, the limitations recited are considered to be obvious variations on the method of Buckley as viewed in combination with Makow. Because the Buckley device and the present invention have the same function, the use of happy and sad faces on the cards, rather than stars and other indicia, is considered to be an obvious choice of design over the prior art. As a result, the claimed invention is not patentable. With respect to claim 20, Buckley discloses a rectangular card, thus reading on the Markush group of the claim. With respect to claims 22 and 29, Evans discloses that each plate has an aperture to facilitate removable placement of the plates onto the pegs. With respect to claims 23 and 30, Evans discloses in Figure 1 that a child's name is placed on a left portion of the panel, and the pegs are to the right. The claimed arrangement is considered to be an obvious variation on the disclosure of Evans, as both serve the same purpose of associating a plurality of pegs with a child's name. With respect to claim 25, both Buckley and Evans disclose a means of mounting the base panel.

Response to Arguments

Applicant's arguments with respect to the pegs have been considered but are moot in view of the new ground(s) of rejection. The rejections under 35 USC 101 and 112 have been overcome by the amendments, and are withdrawn. Because new grounds of rejection have been made, this Action is made non-final.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Fernstrom whose telephone number is (571) 272-4422. The examiner can normally be reached on M-F 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jessica Harrison can be reached on (571) 272-4449. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KF
May 12, 2005


KURT FERNSTROM
PRIMARY EXAMINER